

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

Plaintiff,

vs.

HAWAIIAN EXPRESS SERVICE,
INC., et al.,

Defendants.

CIVIL NO. CV03-00385 SOM-LEK
(Copyright)

**DECLARATION OF DAMIAN D.
CAPOZZOLA IN SUPPORT OF
PCT'S COMBINED OPPOSITION
TO PLAINTIFF WAYNE BERRY'S
MOTION IN LIMINE TO EXCLUDE
TESTIMONY OF JEFFREY
KINRICH AND EVIDENCE OF AND
ANY REFERENCE TO THE
OPINIONS CONTAINED IN THE
SECOND SUPPLEMENTAL
EXPERT REPORT OF JEFFREY
KINRICH (Plaintiff No. 1) AND
REPLY IN SUPPORT OF
DEFENDANT PCT'S MOTION IN
LIMINE TO EXCLUDE THOMAS
UENO**

Hearing: February 24, 2006, 2:00 pm

Judge: Hon. Susan Oki Mollway

Trial Date: February 28, 2006

DECLARATION OF DAMIAN D. CAPOZZOLA

I, DAMIAN D. CAPOZZOLA, declare that:

1. I am an attorney at the law firm of KIRKLAND & ELLIS, LLP, attorneys for Defendant PCT, and I am duly authorized to make this affidavit.

2. I am licensed to practice law in the State of California (SBN 186412) and have been admitted pro hac vice in this case. I know the following to be true through my work in this case. If called upon to do so I could and would competently testify as follows.

3. Attached hereto as Exhibit A are true and correct copies of excerpts from the January 24, 2006 hearing in this matter.

4. Attached hereto as Exhibit B is a true and correct copy of an e-mail I sent to Tim Hogan on July 8, 2005 at 5:31 pm.

5. Attached hereto as Exhibit C is a true and correct copy of an excerpt from the January 30, 2006 hearing in this matter.

6. Attached hereto as Exhibit D is a true and correct copy of an e-mail I sent Tim Hogan on February 13, 2006 at 11:22 am.

7. Attached hereto as Exhibit E is a true and correct copy of an e-mail I received from Tim Hogan on February 13, 2006 at 10:52 am.

8. Attached hereto as Exhibit F is a true and correct copy of an e-mail I received from Tim Hogan on February 17, 2006 at 11:12 pm.

So sworn under penalty of perjury under the laws of the United States of America in Honolulu, Hawaii on February 23, 2006.



Damian D. Capozzola